Supreme Court, U.S.
FILED
NOV 16 1992
OFFICE OF THE CLERK

No. 92-688

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

LOCAL 776, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

STROEHMANN BAKERIES, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Of Counsel:

Morgan, Lewis & Bockius

Dated: November 16, 1992

Steven R. Wall, Esquire
(Counsel of Record)
Catherine Reid, Esquire

2000 One Logan Square
Philadelphia, PA 19103
(215) 963-4928

QUESTION PRESENTED

May a reviewing court refuse to enforce an arbitration award on the grounds that it violates the well-defined and dominant public policy obligating an employer to eradicate workplace sexual harassment, where the arbitrator's interpretation of the collective bargaining agreement reinstates an employee accused of sexual harassment without a determination as to whether the alleged harassment occurred?

RULE 29.1 DISCLOSURE

The parent companies of Stroehmann Bakeries, Inc. are George Westin, Ltd., a publicly traded Canadian corporation, Westin Foods Inc., GWIBV Holdings B.V., and George Westin Inc. The affiliates of Stroehmann Bakeries, Inc. are Interbake Foods, Certi-Fresh Foods Inc., William Nielson Inc., and Instant Products of America, Inc.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
RULE 29.1 DISCLOSURE ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES iv
STATEMENT OF THE CASE 1
REASONS FOR DENYING THE WRIT 4

A. The Courts Below Correctly Applied The Legal Standards Established By The Court Regarding the Review of Arbitration Awards 5

B. There Is No Split Among The Courts of Appeal That Must Be Resolved By The Court 10

C. There Is No Important Federal Question That Must Be Resolved By The Court 12

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Chrysler Corp. v. International Union, Allied Indus. Workers of Am., 959 F.2d 685 (7th Cir.), *cert. denied*, No. 92-38, 1992 WL 171385 (Oct. 5, 1992) 11

Communication Workers of Am. v. Southeastern Elec. Cooperative, 882 F.2d 467 (10th Cir. 1989) 11

Newsday, Inc. v. Long Island Typographical Union, 915 F.2d 840 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1314 (1991) 11

Pan American World Airways, Inc. v. Air Line Pilots Ass'n (In re Pan American Corp.), 140 B.R. 336 (S.D.N.Y. 1992) 13

Perma-Line Corp. v. Sign Pictorial and Display Union, Local 230, 639 F.2d 890 (2d Cir. 1981) 13

United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29 (1987) . . . . . *passim*

United Steelworkers of Am. v. American Mfg. Co., 363 U.S. 564 (1960) 8

United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 8

United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 8

No. 92-688

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

LOCAL 776, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

STROEHMANN BAKERIES, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Stroehmann Bakeries, Inc. ("Stroehmann") respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the judgment of the Court of Appeals for the Third Circuit.

STATEMENT OF THE CASE

This case arises from a discharge grievance submitted to arbitration pursuant to the terms of a collective bargaining agreement. The grievance arose

when Stroehmann terminated the employment of Samuel Leonard, a truck driver who had been accused of sexually assaulting a customer in the course of his job duties delivering Stroehmann products. After investigation, Stroehmann determined that Leonard had committed the assault and discharged him. A-4-6. Mr. Leonard's Union filed a grievance over the termination and the matter was eventually submitted to arbitration. A-6. The arbitrator, John L. Sands, expressly refused to determine whether the alleged assault occurred, despite the testimony at the hearing of both the grievant and the victim. Instead, he found that Stroehmann had insufficiently investigated the alleged incident before discharging Leonard. Based solely on this finding, he ordered Leonard's reinstatement with full back pay, less interim earnings. A-6.

Stroehmann sought to vacate the arbitrator's decision in the United States District Court for the Middle District of Pennsylvania. The District Court vacated the award after concluding that there exists a well-defined and dominant public policy obligating employers to eliminate sexual harassment in the workplace, and that the arbitrator's award violated that public policy. A-7. Specifically, the District Court found that the arbitrator undermined Stroehmann's attempt to eliminate sexual harassment by its employees when he ordered the reinstatement of the grievant without an actual determination as to whether the grievant did or did not commit the assault. The District Court remanded the

matter for a determination on the merits. In its discretion to formulate an appropriate remedial order, however, it remanded the grievance to a different arbitrator because the court concluded that Arbitrator Sands had demonstrated a clear predisposition in Leonard's favor and an insensitivity to sexual harassment claims. A-18.

The Court of Appeals for the Third Circuit affirmed the District Court, expressly finding that "[u]nder the circumstances present here, an arbitrator's award reinstating an employee accused of sexual harassment without a determination regarding the merits of the allegation violates well-established and dominant public policies concerning sexual harassment in the workplace." A-3. Because the award would allow a person who may have committed sexual harassment to continue in the workplace without a determination of whether harassment occurred, the court found that the award did not discourage sexual harassment, but instead undermined the employer's ability to fulfill its obligation to prevent and sanction sexual harassment in the workplace. A-11. The court further held that the District Court did not abuse its discretion in remanding to a new arbitrator because the record sufficiently demonstrated Arbitrator Sands' partiality toward Leonard. A-18.

REASONS FOR DENYING THE WRIT

The petition filed by the Union represents a disingenuous attempt to disguise a case as worthy of Supreme Court review simply because the Union does not accept the holdings of the two courts below. In attempting to describe non-existent conflicts with the holdings of this Court and other courts of appeals, the Union misstates the holdings of the Court of Appeals for the Third Circuit and the District Court for the Middle District of Pennsylvania, as well as those of this Court and other circuits.

Even a brief reading of the opinions of the two courts below renders two points clear. First, both lower courts acknowledged their limited authority in reviewing arbitration awards and carefully followed this Court's holding in *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987). Both courts identified a well-defined and dominant public policy by referring to positive law and then found that the arbitrator's interpretation of the parties' collective bargaining agreement violated that public policy. A-8-11; A-34; A-37. In doing so, the two courts below acted consistently with the other circuits that have addressed the validity of arbitration awards implicating the public policy demanding eradication of sexual harassment in the workplace. Second, the Court of Appeals twice expressly noted that it was applying the

clearly established rule of law to the narrow circumstances presented by the case, making it of limited importance, perhaps of importance only to the litigants themselves. A-3; A-11.

Thus, the Petition for Writ of Certiorari should be denied because the legal standard for judicial review of arbitration awards, which is well-established by the decisions of this Court, was correctly applied by the District Court and the Court of Appeals, with identical results. The case presents no conflict with the decisions of this Court and no conflict with the decisions of the other circuits. Moreover, the case raises no important question of federal law as the courts below did not establish any new rule of law, but rather expressly applied established law to a narrow set of facts.

A. The Courts Below Correctly Applied The Legal Standards Established By The Court Regarding The Review of Arbitration Awards.

Stroehmann and the two courts below agree with the Union that courts play only a limited role in reviewing arbitration awards. A-8-9; A-35. However, in *Misco*, this Court outlined an exception to the deference usually owed to an arbitrator's award, holding that courts may not enforce arbitration awards where the arbitrator's interpretation of the parties' collective bargaining agreement violates a well-defined and dominant public policy. It was on this narrow exception that the two

courts below relied, carefully applying the holding of *Misco* in reviewing Arbitrator Sands' award. A-9; A-36. Therefore, the Union's lengthy discussion concerning a reviewing court's generally narrow role, occupying pages 5 through 9 of its Petition, is misleading and irrelevant. The courts below acted within an exception to the general rule, correctly applying precedent established by the Court in *Misco*.

Contrary to the impression the Union seeks to convey, the Court of Appeals for the Third Circuit and the District Court for the Middle District of Pennsylvania did not usurp the authority of the arbitrator or substitute their judgments for that of the arbitrator. The courts did not rule on the merits; neither court determined whether Samuel Leonard committed the alleged harassment or assault.[1/] A-14; A-37. Nor did either court impose a

---

1/ The Union raises a red herring in arguing that the appellate court acted impermissibly in reviewing the evidence that the arbitrator relied on in determining that Leonard had not received adequate industrial due process. Quite obviously, if a court is to fulfill the role contemplated by *Misco*, it *must* look at the evidence presented to the arbitrator. Otherwise, it would be unable to determine whether the award crafted by the arbitrator in the factual setting presented to him was consistent with the public policy concerns raised by the case. *Misco* itself contemplated that reviewing courts would be required to examine evidence presented at the arbitration. In fact, the court stated that "[i]n pursuing its public policy inquiry, the Court of Appeals *quite*

remedy that it thought more appropriate than that imposed by the arbitrator. To the contrary, the District Court remanded the arbitration to a new arbitrator, *expressly supporting the policies underlying labor arbitrations*. A-14; A-37. The appellate court affirmed this course of action. A-18-19.[2/] Therefore, both courts acted

---

properly considered the established fact that traces of marijuana had been found in Cooper's car." 484 U.S. at 44 (emphasis added). In the instant case it would be impossible to determine if the arbitrator's award, which was founded on his evaluation of the industrial due process afforded to Leonard, violated public policy without examining the evidence on which the arbitrator relied.

Moreover, even assuming *arguendo* that the appellate court exceeded its authority slightly in this area, it is irrelevant in determining whether to grant or deny the Writ. The court did not base its finding that the award violated public policy on its disagreement with the arbitrator regarding industrial due process. It only addressed the due process issue in order to dispose of the Union's argument that the District Court did not give proper weight to industrial due process concerns. It is abundantly clear from the opinions that both lower courts vacated the arbitration award because it violated public policy, not because in their opinion Leonard had received sufficient due process. A-14.

[2/] The Union's argument that the Court of Appeals usurped the role of the arbitrator by determining procedural questions is puzzling. The Union provides no explanation as to how the appellate court's holding places the burden of proof on an employee to disprove allegations of harassment. To the contrary, the Court of Appeals' opinion expressly makes no changes in the allocation of the burden of proof between employee and employer. A-19, n.8. The only burden affected by the court's holding is the burden *on the arbitrator*.

consistently with the law long since established by this Court in the cases known as the *Steelworkers' Trilogy*.[3/]

The reason both courts below refused to enforce the arbitration award is clear from the opinions. Relying on *Misco*, both courts identified a well-defined and dominant public policy demanding the elimination of sexual harassment in the workplace by referring to existing laws and legal precedents. A-10-11; A-34.[4/] The

---

3/ *United Steelworkers of Am. v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

4/ The Union criticizes the lower courts' reliance on Title VII, misinterpreting Title VII as having no effect where an employee of one company harasses the employee of another. Clearly, Stauffers had an obligation to make Ms. Weigand's workplace free of harassment -- a goal which could only be accomplished through Stroehmann's investigation of the allegations against its employee. And although an employee of Stauffers *may* not have had a cause of action under Title VII against Stroehmann, it does not follow that the concerns raised by Title VII are not presented in this case. They are clearly present since the arbitration award allows an individual to return to the workplace, in fact to the many workplaces he visits in the course of his job duties, without determining if he engaged in sexual harassment or is likely to do so again.

Moreover, the Union is not in a position to criticize the lower courts' reliance on Title VII. It *conceded* at the district court level that well-defined and dominant public policies against sexual harassment and assault existed. A-34. At the appellate level, the Union never

courts then found that Arbitrator Sands, although confronted with an employee discharged for allegedly sexually assaulting an individual in the course of his job duties, interpreted the parties' contract in such a way that he avoided determining whether the employee committed the acts of which he was accused. A-7; A-34. The arbitrator's interpretation, therefore, violated explicit public policy. A-3; A-37.

The Union's argument that the Court of Appeals exceeded its authority under *Misco* relies upon a mischaracterization of the court's holding. The Union acknowledges that *Misco* allows a court to refuse to enforce an award where the arbitrator's interpretation of the contract violates public policy. Petition at 9. The Union then argues that the two courts below focused on the arbitrator's "reasoning," instead of his "award," thus exceeding their authority under *Misco*. As the appellate opinion makes clear, the Union's argument lacks merit:

> The Union misunderstands the rationale for the district court's holding when it argues that the court improperly found the means used to reach the award, and not the award itself violated public policy. The

---

criticized the District Court's reliance on Title VII as the source of the public policy in support of the prevention of harassment in the workplace; nor did it argue that the public policy at issue in the case was not well-defined and dominant, or that it could not be ascertained by reference to law and legal precedent.

> district court held that the award itself violated public policy because the award would have reinstated Leonard without determining the merits of the allegations against him. That holding is proper because an award of full reinstatement without findings on what Leonard did violates the strong public policy against prevention of sexual harassment in the workplace. The Union's first argument lacks merit. A-14.

Contrary to the Union's argument, both courts below acted within the authority granted by *Misco* when they found that, as the appellate court stated, "Arbitrator Sands' interpretation of the Agreement's clause relating to industrial due process neither considered nor respected public policy. Instead, his interpretation violated it." A-14.

B. There Is No Split Among The Courts Of Appeals That Must Be Resolved By The Court.

This case does not present the Court with any split among the courts of appeals. To date, four circuit courts, including the appellate court below, have addressed the appropriateness of an arbitration award involving the discipline of an employee accused of sexual harassment. All four appellate courts have held that *Misco* provides the framework for their analyses. All four appellate courts have held that the public policy in support of

eliminating sexual harassment in the workplace is well-defined and dominant within the meaning of *Misco*. The courts have then simply applied *Misco* to the specific arbitration award at issue. It is only because the *facts* before each court differed, that the results have differed.[5/] The reasoning applied by all courts has been identical. In fact, the Court of Appeals for the Third Circuit expressly noted that the opinions of the Courts of Appeals for the Second and Tenth Circuits *supported* its decision. A-12.

[5/] In *Communication Workers of Am. v. Southeastern Elec. Cooperative*, 882 F.2d 467 (10th Cir. 1989) and *Chrysler Corp. v. International Union, Allied Indus. Workers of Am.*, 959 F.2d 685 (7th Cir.), *cert. denied*, No. 92-38, 1992 WL 171385 (Oct. 5, 1992), the appellate courts affirmed enforcements of arbitration awards which reinstated employees discharged for sexual harassment. The courts found that the arbitration awards fully considered the public policy concern involved. Reinstatement did not violate that concern because, under the circumstances presented, the employees involved had been sufficiently disciplined, and were unlikely to engage in harassment again. In *Newsday, Inc. v. Long Island Typographical Union*, 915 F.2d 840 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1314 (1991), the court refused to enforce an arbitration award involving sexual harassment because, on the facts presented by that case, reinstatement of an unrepentant repeat offender violated public policy.

Thus, there is no split in the circuits that would justify review by this Court.[6/] Review would simply embroil the Court in a routine application of *Misco* to an unremarkable fact pattern -- a task that both courts below have already undertaken with identical results.

C. There Is No Important Federal Question That Must Be Resolved By The Court.

Finally, this case presents no important federal question for the Court's review. In an attempt to fabricate one, the Union alleges that the court below somehow established a general rule requiring arbitrators to make a determination on the merits in every case involving allegations of sexual harassment. The Union further argues that this somehow elevates the public policy against sexual harassment in the workplace above the public policy at issue in *Misco*. The Union contends

---

6/ The Union's argument that there is a split in the circuits because the Court of Appeals for the Third Circuit looked to whether Leonard's *conduct*, as opposed to the arbitrator's award, violated public policy is almost unworthy of comment. A brief reading of the lower courts' opinions disposes of the Union's argument. No less than nine times did the appellate court state that it was the arbitrator's interpretation of the collective bargaining agreement, *the award itself*, which it found violative of the public policy. A-3; A-11; A-13; A-14; A-19. Similarly, the District Court twice stated that the arbitrator's *decision* violated public policy. A-36; A-37. Neither court gives any indication whatsoever that it considered Leonard's conduct; rather they considered the conduct of the arbitrator.

that this would open the floodgates to litigation attempting to establish a hierarchy among public policies. However, no such danger threatens the Court. The Court of Appeals clearly did *not* establish a general rule requiring a determination on the merits in all cases involving sexual harassment. To the contrary, the Court of Appeals twice expressly limited its holding to the circumstances presented by the case. A-3; A-11.

Nor is the holding of the court below, requiring a determination of the merits, inconsistent with *Misco* or the holdings of the two courts cited by the Union. It was not a competition among different public policies that led to the differing results in *Misco*, *Perma-Line*, *Pan American* and *Stroehmann*. Instead, it was the different facts with which the courts were presented.[7/] To grant *certiorari* on

---

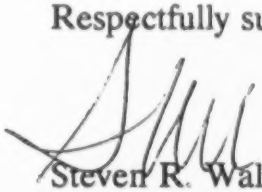
7/ In *Misco*, no determination as to whether the employee actually smoked marijuana in his car was necessary because, even if the employee had done so, an award of reinstatement would not clearly violate public policy, because the connection between using drugs in one's car and using them in the workplace was tenuous. At issue in *Perma-Line Corp. v. Sign Pictorial and Display Union*, 639 F.2d 890 (2d Cir. 1981) was a presumptively illegal contract provision. Thus, further analysis of the contract provision, and not a determination as to whether the employee engaged in the alleged conduct, which apparently was undisputed, was necessary to ensure the award's compliance with public policy. In *Pan American World Airways v. Air Line Pilots Ass'n (In re Pan American Corp.)*, 140 B.R. 336 (S.D.N.Y. 1992), a determination on the merits was unnecessary largely because one had already been performed by the National Transportation Safety Board.

this basis would simply involve the Court in applying the analysis which it has already applied in *Misco* to a different fact pattern.

CONCLUSION

Because both courts below acted within the authority to review arbitration awards established by this Court, and because their holdings are consistent with the holdings of the other courts of appeals that have addressed similar issues and raise no important federal questions, the Union's Petition for Writ of Certiorari should be denied.

Respectfully submitted,



Steven R. Wall
(Counsel of Record)
Catherine Reid
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-4928

Of Counsel:

Morgan, Lewis &
Bockius

Dated: November 16, 1992

Id. at 341-42. In the instant case, the two courts below found that the facts presented by the case *did* require a determination on the merits, because the individual was alleged to have engaged in serious sexual misconduct while in the course of his job duties, job duties to which the arbitrator's award would have returned him.